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No. 86-1560

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

SHERIDAN ROAD BAPTIST CHURCH, et al,
Petitioners,

v.

STATE OF MICHIGAN,
DEPARTMENT OF EDUCATION, et al,
Respondents.

On Petition for Writ of Certiorari
to the Supreme Court of Michigan

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Michigan statute requiring the use of certificated teachers for secular instruction in public and private, including religious, elementary and secondary schools violates petitioners' rights of free exercise of religion under the First Amendment?

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

In Michigan, the Legislature has required, since 1921, that teachers in both public and private elementary and secondary schools hold a teaching certificate. See MCL 388.553; MSA 15.1923. Petitioners contend that this certification requirement, as applied to them, violates their free exercise of religion rights under the First Amendment.

The Michigan Court of Appeals unanimously sustained the certification requirement as applied to petitioners. 132 Mich App 1; 348 NW2d 263 (1984). The Michigan Supreme Court affirmed that decision by an equally divided court. 426 Mich 462; 396 NW2d 373 (1986).

Many religiously-affiliated colleges and universities operate teacher training programs that have been accepted by Michigan for teacher certification purposes. Many graduates of fundamentalist Christian institutions, such as Bob Jones University, have received Michigan teaching certificates. Petitioners have no religious objections to hiring teachers holding valid Michigan teaching certificates. Both schools employ teachers who hold valid Michigan teaching certificates. A person holding a valid Michigan teaching certificate could teach the curriculum used in petitioners' schools without violating petitioners' religious beliefs. There was no testimony at trial that there is a shortage of certificated teachers who share petitioners' religious beliefs or that petitioners cannot staff their schools with certified teachers. In addition, if petitioners were unable to find sufficient certificated teachers who also met their religious qualifications, 1979 AC, R 390.1145 authorizes issuance of emergency permits for persons "with reasonable qualifications when failure to authorize the permit will deprive children of an education." See 426 Mich, *supra*, at 482, 495-497; 396 NW2d, *supra*, at 381-382, 388 and 132 Mich App, *supra*, at 12-13, n 1; 348 NW2d, *supra*, at 269-270, n 1.

Petitioners' own expert agreed that educational qualifications are desirable in the teaching profession. In Michigan, a candidate for certification must take a minimum of 20 semester hours of education courses, which includes a minimum of six semester hours of directed student teaching. Petitioners' expert, Dr. Russell Kirk, testified that directed student teaching is "always a good thing." His objection to teacher certification was centered on the other fourteen hours of education courses which, in his view, consume time that should be spent on substantive subject matter courses. This dispute over fourteen hours out of a four-year college program clearly does not rise to the level of a federal constitutional issue that this Court should re-

view. See 426 Mich, *supra*, at 473, 510; 396 NW2d, *supra*, at 378, 394-395, and Transcript, Vol 4, April 20, 1982, at pp 40, 53-54.

SUMMARY OF ARGUMENT

This Court has consistently refused to review teacher certification requirements challenged on free exercise grounds. This Court's earlier decisions support the power of the states to impose reasonable regulations on private, including religious, elementary and secondary schools. The result reached in this case is consistent with the result reached by other state appellate courts on this issue. The selection of the means by which each state furthers its compelling interest in the secular education of all young people in the state is a matter for the elected representatives of the people in each of the fifty states rather than this Court.

ARGUMENT

I.

REASONS WHY THIS COURT SHOULD DENY THE PETITION FOR A WRIT OF CERTIORARI

A. This Court has already declined to review this issue several times.

In *State of Nebraska ex rel Douglas* v *Faith Baptist Church of Louisville, Nebraska*, 207 Neb 802; 301 NW2d 571 (1981), this Court rejected a free exercise claim against Nebraska's statutory teacher certification requirement. This Court dismissed the appeal "for want of a substantial federal question." 454 US 803 (1981). On three subsequent occasions, this Court again declined to review unsuccessful free exercise challenges to statutorily imposed teacher

certification requirements. *State of North Dakota* v *Rivinius*, 328 NW2d 220 (ND, 1982), *cert den* 460 US 1070 (1983); *Johnson* v *Charles City Community Schools Board of Education*, 368 NW2d 74 (Iowa, 1985), *cert den sub nom Pruessner* v *Benton*, ___ US ___; 106 S Ct 594 (1985); *State of North Dakota* v *Patzer*, 382 NW2d 631 (ND, 1986), *cert den* ___ US ___; 107 S Ct 99 (1986).

B. The prior decisions of this Court consistently support the authority of the states to impose reasonable educational standards on private, religious elementary and secondary schools.

In *Board of Education* v *Allen*, 392 US 236, 245-247 (1968), this Court recognized the authority of state legislatures to impose minimum standards on private religious schools as follows:

> "The major reason offered by appellants for distinguishing free textbooks from free bus fares is that books, but not buses, are critical to the teaching process, and in a sectarian school that process is employed to teach religion. However this Court has long recognized that religious schools pursue two goals, religious instruction and secular education. In the leading case of Pierce v Society of Sisters, 268 US 510, 69 L Ed 1070, 45 S Ct 571, 39 ALR 468 (1925), the Court held that although it would not question Oregon's power to compel school attendance or require that the attendance be at an institution meeting State-imposed requirements as to quality and nature of curriculum, Oregon had not shown that its interest in secular education required that all children attend publicly operated schools. A premise of this holding was the view that the State's interest in education would be served sufficiently by reliance on the secular teaching that accompanied religious training in the schools main-

> tained by the Society of Sisters. Since Pierce, a substantial body of case law has confirmed the power of the States to insist that attendance at private schools, if it is to satisfy state compulsory-attendance laws, be at institutions which provide minimum hours of instruction, employ teachers of specified training, and cover prescribed subjects of instruction. Indeed, the State's interest in assuring that these standards are being met has been considered a sufficient reason for refusing to accept instruction at home as compliance with compulsory education statutes. These cases were a sensible corollary of Pierce v Society of Sisters: if the State must satisfy its interest in secular education through the instrument of private schools, it has a proper interest in the manner in which those schools perform their secular educational function. . . . "
> (Footnotes omitted.)

Other cases recognizing this authority include *Meyer* v *Nebraska*, 262 US 390, 402 (1923); *Pierce* v *Society of Sisters*, 268 US 510, 534 (1925); *Lemon* v *Kurtzman*, 403 US 602, 614 (1971); *Wisconsin* v *Yoder*, 406 US 205, 213 (1972); *Runyon* v *McCrary*, 427 US 160, 178-179 (1976); *Wolman* v *Walter*, 433 US 229, 240 (1977).

C. Appellate courts of other states have reached the same result that Michigan's appellate courts reached in this case.

Other state appellate courts have consistently upheld statutory teacher certification requirements against free exercise of religion challenges. *State of North Dakota* v *Shaver*, 294 NW2d 883 (ND, 1980); *State of Nebraska ex rel Douglas* v *Faith Baptist Church, supra; State* v *Rivinius, supra; Johnson* v *Charles City Community Schools Board of Education, supra.* These decisions, in harmony with the teachings of this Court, sustain reasonable state regulations imposed on both public and private,

including religious, elementary and secondary schools in furtherance of each state's compelling interest in the secular education of all young people in the state.

The cases relied upon at pages 11 and 12 of the petition for certiorari, in support of an alleged conflict in state court decisions on the teacher certification issue, are clearly not applicable. *Kentucky State Board for Elementary and Secondary Education* v *Rudasill*, 589 SW2d 877 (Ky, 1979), *cert den* 446 US 938 (1980), was decided solely on the basis of a unique Kentucky state constitutional provision that no man "be compelled to send his child to any school to which he may be conscientiously opposed." *State of Ohio* v *Whisner*, 47 Ohio St 2d 181; 351 NE2d 750 (1976), involved an attempt at gross overregulation of nonpublic schools far more onerous than even those regulations to which Ohio public schools were subject. *State of Vermont* v *LaBarge*, 134 Vt 276; 357 A2d 121 (Vt, 1976), was a truancy prosecution. While a child had to attend an "approved" nonpublic school to be exempt from the compulsory attendance law, schools were not required to be approved and there was no statutory mechanism for regulating nonpublic schools. Upon close examination, it is clear that there is no conflict among state courts on the teacher certification issue as applied to private, religious schools.

D. **The fifty state legislatures, rather than this Court, should be able to select the means for furthering the state's compelling interest in the secular education of all young people in the state.**

It is beyond dispute that the State of Michigan, along with the other 49 states, has a compelling interest in the secular education of its youthful residents. *Brown* v *Board of Education*, 347 US 483, 493 (1954). There are a variety of potential means to effectuate that compelling state interest including teacher certification, teacher testing, or some form of standardized testing of students in private

schools. Six states, including Michigan, have imposed teacher certification requirements. Other states have recently amended their legislation to provide different means of effectuating their compelling interest in the secular education of their resident youth. 426 Mich, *supra*, at 561-562, n 58, n 59; 396 NW2d, *supra*, at 419-420, n 58, n 59.

Since only six states currently impose comparable teacher certification requirements upon nonpublic schools, it is hardly a national problem demanding this Court's attention. Further, the legislative activity in this area demonstrates that, in keeping with our democratic federal system and separation of powers, elected representatives in each state should and do make these educational decisions for the people of each state. This Court should not attempt to enunciate a rule binding upon all fifty states.

CONCLUSION

For all of the foregoing reasons, this Court should deny the petition for writ of certiorari.

Respectfully submitted,

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